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OCT 06 2004

In re Application of
Michael Nicholas Morton
Application No. 10/668,564
Filed: September 23, 2003
Attorney Docket No. 674543-2004
Title: LIPID PROFILE MODULATION

OFFICE OF PETITIONS
DECISION ON PETITION

This is a decision on the petition filed August 16, 2004, requesting that the above-identified application be accorded a filing date of September 23, 2003, with page 53 of the specification as a part of the original disclosure of the application.

The application was filed on September 23, 2003. However, on August 9, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (notice) stating that the application had been accorded a filing date of September 23, 2003, and advising applicants that the application appeared to have been deposited without page 53 of the specification.

Petitioners allege that page 53 of the specification was filed on September 23, 2003. In support, Petitioner has included a copy of his stamped postcard receipt acknowledging receipt of "Application for patent, including 70 pages specification 51 claims 1 page abstract" in the United States Patent and Trademark Office (Office) on September 23, 2003. Applicants request that page 53 of the specification be accorded a filing date of September 23, 2003.

The argument and evidence presented are not persuasive. The PTO file is the official record of the papers originally filed in this application. A review of the official electronic file reveals 70 pages of specification (pages i, 1-52, and 54-70), as well as two sets of claims. Claims 1-48 appear on pages 71-74, and claims 1-51 appear on pages 75-78. It is noted that the two sets of claims do not appear to be duplicates. Page 53 does not appear in the electronic file.

Petitioner has included a postcard receipt in which he indicated that 70 pages of specification were being submitted to the Office, and the Office confirmed that 70 pages of specification were received. These 70 pages have been located, and it appears that Petitioner did indeed submit 70 pages to the Office. Page 53 was not among these papers. If the undersigned were to add

page 53 to the official file, the specification would constitute 71 pages. As such, it is clear that page 53 was not submitted on filing.

For this reason, the petition under 37 CFR 1.53(b) is dismissed.

Page 53 of the specification, submitted with the instant petition, will not be entered. If petitioner desires for the examiner to consider this page which was not submitted as part of the original disclosure, then he may submit this page as an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter¹. The amendment is not new matter if the substance was a part of the disclosure of the prior application

The petition fee of \$130.00 will not be refunded, as this petition was not necessitated by any error on the part of the Office.

The application is being returned to OIPE for further processing with a filing date of September 23, 2003, using only the pages filed on that date. Page 53 of the specification will not be entered.

OIPE will also charge Applicant's Deposit Account, since 99 claims were submitted but the check which Applicant submitted only covered 51 claims.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries *regarding this decision* should be directed to the undersigned at 571-272-3225.



**Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office**

¹ See MPEP 608.02(a).